

# Memorandum

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CITY SECRETARY  
DALLAS, TEXAS



CITY OF DALLAS

DATE January 24, 2014

TO Rosa Rios  
City Secretary

SUBJECT **Dental Delite**  
**October 23, 2013 – Agenda Item # 53**

The Office of Economic Development is requesting a correction be made to the official record of Resolution No. 13-1865, which was authorized by the City Council on October 23, 2013. Upon further review of the item, it was discovered that a typographical error had been made to the company's name in the subject, prior action and resolution was incorrect.

The Subject should read as followings:

## SUBJECT

Authorize a Chapter 380 Forgivable Loan in the amount of \$150,000 to ~~GBD BDM, LLC~~ GBG BDM, LLC for gap financing for construction costs related to expanding the offices of Dental Delite, the dental practice of Belinda D. Marsaw, DDS to 8222 Bruton Road, Dallas Texas in the Pleasant Grove area  
- Not to exceed \$150,000 - Financing: Public/Private Partnership Funds

The Prior Action should read as followings:

## PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On October 7, 2013, a memo was submitted to the Economic Development Committee regarding authorizing a Chapter 380 Forgivable Loan in the amount of \$150,000 to ~~GBD BDM, LLC~~ GBG BDM, LLC for construction costs related to expanding the offices of Dental Delite.

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Resolution No. 13-1865  
 Approved on October 23, 2013,  
 as amended on August 27, 2014

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STATE OF TEXAS

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COUNTY OF DALLAS

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CITY SECRETARY  
DALLAS, TEXAS

## CHAPTER 380 CONDITIONAL GRANT AGREEMENT WITH GBG BDM LLC.

THIS CHAPTER 380 CONDITIONAL GRANT AGREEMENT ("Agreement") is entered into by and between the City of Dallas, a Texas municipal corporation, located in Dallas County, Texas ("City"), acting by and through its authorized officers, and GBG BDM, LLC, a Texas limited liability company, located at 8222 Bruton Road, Dallas, Texas ("Developer"), acting by and through its authorized officers.

### WITNESSETH:

**WHEREAS**, City recognizes the importance of its continued role in local economic development; and

**WHEREAS**, pursuant to Resolution No. 14-0993, approved by the City Council on June 25, 2014, the City: (1) elected to continue its participation in economic development incentives and re-adopted its Public/Private Partnership Program Guidelines and Criteria, which established certain guidelines and criteria for the use of City incentive programs for private development projects, and (2) established programs for making loans and grants of public money to promote local economic development and to stimulate business and commercial activity in the City pursuant to the Economic Development Programs provisions under Chapter 380 of the Texas Local Government Code ("Economic Development Act"); and

**WHEREAS**, consistent with the Economic Development Act and City's Public/Private Partnership Program Guidelines and Criteria, it is in the interest of City to enter into this Agreement and provide these incentives as a part of City's ongoing program to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, pursuant to Resolution No. 13-1865, approved on October 23, 2013 as amended by Resolution No. 14- 1371, on August 27, 2014, the City Council authorized this Agreement with Developer, in furtherance of the City's economic development goals, to add 10,000 square feet of space to expand the existing Dental Delite dental practice located at 8222 Bruton Road in the Pleasant Grove area of the city (the "Project") in exchange for a Chapter 380 conditional grant that shall be secured by the Property (herein defined) as detailed herein; and

**WHEREAS**, Developer owns property within the corporate city limits of Dallas at 8222 Bruton Road, Dallas County, Texas, (the "Property") as more particularly described in **Exhibit A** and as a condition for receiving Grant funds, Developer shall redevelop the Property in accordance with this Grant Agreement; and

**NOW THEREFORE**, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

## **SECTION 1. AGREEMENT ADMINISTRATION**

This Agreement shall be administered by City's Director of the Office of Economic Development ("Director") or his or her designee.

## **SECTION 2. DEVELOPER OBLIGATIONS – THE PROJECT IMPROVEMENTS**

A. Dental Clinic Expansion. In furtherance of the City's economic development goals and as consideration for the economic development Grant (herein defined), Developer shall expand her current dental practice located at 8222 Bruton Road, which property is more particularly described on **Exhibit A** attached hereto (the "Property"). Developer shall invest a minimum of ONE MILLION DOLLARS (\$1,000,000) into the expansion and shall add at least 10,000 square feet to the building improvements on the Property (collectively the "Project" or "Project Improvements") as further described in **Exhibit B**. Completion of the Project Improvements shall be evidenced by a Certificate of Occupancy issued by the City for the Project described herein, and Developer shall obtain a final Certificate of Occupancy within three (3) years after the date of first draw under this Agreement, hereinafter referred to as the "CO Date".

B. Interim Completion Dates. Developer shall complete the following interim milestones by the dates noted herein:

- (i) To ensure the public purpose is met and that the Project Improvements are completed by the CO Date, Developer shall execute the Grant Agreement and record the Deed of Trust and Deed Restrictions in the real property records of the county or counties in which the Property or any portion of the Property is located. No Grant funds (hereinafter defined) will be paid or reimbursed to Developer until the Deed of Trust and Deed Restrictions are recorded, and
- (ii) Developer shall have procured all Insurance Policies and shall have met all the insurance requirements under this Agreement and provide satisfactory documentation thereof to the City as a condition precedent to the payment of any Grant funds pursuant to this Agreement, and
- (iii) Developer shall obtain a written legally binding standard loan commitment letter from any state or federally chartered lending institution including, but not limited to, National Banking Associations or Savings and Loan Associations or other entity approved by the Director approving a loan for the remainder of the necessary construction costs for the construction of the Project on the Property in the amount of at least \$945,000.00, and

- (iv) Developer shall obtain all appropriate zoning or submit applications for zoning; make application(s) for one or more permits for site work or building construction with the City's Building Inspections Division; and obtain permits for site work or building construction; and
- (v) Commence construction within one year after date of execution of this Agreement.

C. Other Agreements. The City may request, and in such event, Developer shall provide to City complete, true, and correct executed copies of any construction contracts, loan commitments, or other agreements applicable to the Project or the Property. Developer shall perform all of its obligations under such agreements. Developer indemnifies and holds City harmless against and from any loss, cost, liability, or expense (including, but not limited to, attorney's fees and expenses) resulting from any failure of Developer to so perform.

D. Plans and Specifications. Before beginning construction of the Project Improvements and prior to the expenditure of any Developers funds, Developer will submit to City a complete set of Plans and Specifications. Developer will not, without the prior written consent of City, amend, alter or change, pursuant to change order, amendment, or otherwise, the Plans and Specifications. The Project Improvements will be constructed in accordance with the Plans and Specifications.

The City has no liability or obligation whatsoever in connection with the Plans and Specifications and no responsibility for the adequacy thereof or for the construction of the Project Improvements contemplated by the Plans and Specifications. City shall have no liability or obligation to Developer arising out of any inspection of the Project Improvements. No such inspection nor any failure by City to make objections after any such inspection shall constitute a representation by City that the Project Improvements are in accordance with the Plans and Specifications or constitute a waiver of City's right thereafter to insist that the Project Improvements be constructed in accordance with the Plans and Specifications. Developer, will, upon demand of City and at Developer's sole expense, correct any structural defect in the Project Improvements or any variance from the Plans and Specifications not approved in writing by City.

E. Insurance Policies. Developer shall furnish to City, not later than 10 days after Developer has signed this Agreement, certificates of insurance as proof that it has secured and paid for the Insurance Policies. Such insurance shall cover all insurable risks incident to or in connection with the execution, performance, attempted performance or nonperformance of this Agreement. All insurance must remain in effect until the termination of this Agreement. City shall have no duty to advance Grant funds or otherwise perform under this Agreement until the certificates of insurance described below and in **Exhibit C** attached hereto have been delivered to the Director of the Office of Economic Development at the address listed in Section 16 herein.

Developer will maintain or cause to be maintained the Insurance Policies and any other insurance reasonably required by the City and the Grant Documents in full force and effect and do all acts and things, at Developer's expense, as may be necessary or appropriate, in the judgment of the

City, to enable the City to receive all insurance proceeds up to the amount of the Grant then outstanding during the term of this Agreement. All-risk Insurance Policies shall have loss made payable to the City as mortgagee (and to the City as loss payee named co-insured) together with a standard mortgagee clause. Commercial General Liability, Comprehensive Automobile Liability and Workers' Compensation coverage shall have a provision giving the City thirty (30) days prior notice of cancellation or change of the coverage.

F. Statutory Requirements. Developer shall develop and maintain the Project Improvements and the Property in conformity with applicable Dallas City Code and any and all other applicable federal, state and local laws, statutes, codes, and regulatory requirements.

G. Compliance with Grant Documents. Developer will comply with all terms, provisions, and conditions of this Agreement, the Grant Documents, and any other instruments securing, documenting, or related to this Grant.

H. Grant Expenses. Developer will pay all closing fees, title company fees, title insurance premiums, filing fees, document preparation costs, attorney's fees, administrative, origination and servicing costs, and all other costs and expenses incurred in connection with the preparation, execution, delivery, and performance of this Agreement and the Grant Documents, including but not limited to a mortgagee policy acceptable to City.

I. Minority and Women Business Enterprise Commitment. Developer agrees to abide by City's M/WBE Good Faith Effort Policy, attached as **Exhibit F**, with a goal of 20% M/WBE participating for all construction work on the Project.

### **SECTION 3. CITY OBLIGATIONS/CHAPTER 380 CONDITIONAL GRANT**

A. The Grant. Consistent with Section 380.001 of the Act, the City's Chapter 380 Program for loans and grants, the City's Public/Private Partnership Program Guidelines and Criteria and in consideration for Developer's commitments, detailed in Section 2 above, Developer is hereby awarded a Chapter 380 Conditional Economic Development Grant to provide funding for the Project as described herein. The City's obligations under this Agreement and with respect to the Grant are strictly contingent and conditioned on Developer's strict compliance with the terms, conditions, and provisions of the Grant Documents. Default by Developer shall relieve the City of any obligations to advance remaining unfunded amounts under this Grant.

Subject to the conditions hereof and the Grant Documents, the City will make Advances to Developer up to the total Grant amount for items reflected in the Funds Budget. Developer may not request disbursement of Funds under this Agreement until the Funds are needed for payment of eligible costs, and the amount of each request must be limited to the amount needed. Further, Developer understands and agrees that the City shall make no Advances until it has received verification that Developer has procured all Insurance Policies and met all the insurance requirements under this Agreement and the Grant Documents.

The City shall pay Developer a conditional Chapter 380 economic development grant ("Grant") as follows:

- (1) Grant Installments. An economic development Grant in an amount not to exceed \$150,000 shall be paid by City to Developer in one or more installments upon satisfaction of the following conditions precedent:
  - (a) Grant Installments for Pre-Development Eligible Costs. For the first installment, Developer shall execute a deed of trust in favor of the City for real property valued at an amount no less than the amount of a Grant installment, without contingent liabilities and acceptable to the City ("Collateral Property") and the Deed Restrictions. The form of the Deed Restrictions and Deed of Trust to be used by Developer are attached hereto as **Exhibit E**.
    - (i) The value of Collateral Properties will be determined based on an independent appraisal (paid for by Developer) by an appraiser acceptable to the City.
    - (ii) The Grant proceeds will be made available upon receipt of proper documentation for the pledge of collateral and invoices depicting actual costs incurred or anticipated. Required documentation for the pledge of Collateral Property may include:
      - Approval of the Collateral Property by the Director;
      - Deed(s) of trust for the Collateral Property;
      - Deed Restrictions for the Collateral Property;
      - Insurance on the Property; and
      - Title insurance, property surveys, and other applicable property closing documents.
  - (b) Grant Installments for Eligible Costs. The remaining Grant proceeds will be made available upon receipt of invoices or good faith estimates depicting actual costs incurred or anticipated for the approved Eligible Costs work program. Eligible Costs include planning, the costs for a project feasibility study and other related costs acceptable to the Director. In the event of a default by Developer pursuant to Section 6 of this Agreement, any materials or work product that have been obtained with Grant proceeds used to fund or reimburse Eligible Costs shall become the property of the City of Dallas.
- (2) **Nothing in this Agreement shall be construed as an obligation or commitment of the City to pay or to reimburse any costs or expenses incurred prior to consideration and approval of such incentives by the City Council on October 23, 2013. Nothing in this Agreement shall be construed as creating a debt of the City for the Project, as neither the full faith and**

**credit or the general revenues of the City shall be available for the payment of any obligation of the City hereunder.**

#### **SECTION 4. GRANT RECAPTURE**

A. Once the Project Improvements are completed in accordance with the terms of this Agreement, and no event of default has occurred pursuant to Section 6, then (i) Developer shall be entitled to the full \$150,000 Grant, (ii) Developer shall be released from liability on the Note(s), (iii) releases of the Deed(s) of Trust and Deed(s) Restrictions shall be executed and recorded by the City forthwith, and (iv) any contingent liability for repayment, reimbursement or recapture of Grant funds pursuant to this Agreement shall be terminated.

B. If completion of the Project as evidenced by a Certificate of Occupancy issued by the City has not occurred by three (3) years from the date of the first draw under this Agreement, Developer agrees to reimburse the City for any Grant funds received with cash, cash equivalent, transfer of collateral property, or a combination of cash, cash equivalent, and/or transfer of collateral property or a combination of cash, cash equivalent or property equal in value to no less than the amount of the Grant funds received.

#### **SECTION 5. REPRESENTATIONS AND WARRANTIES**

Developer hereby represents and warrants to City that:

A. No violation of any Governmental Requirements exists or will exist; the use of the Collateral Property and any of the Project Improvements constructed thereon complies and will comply with all applicable zoning ordinances, regulations and restrictive covenants affecting such property; and all Governmental Requirements have been or will be satisfied.

B. The financial statements and information regarding the Project that Developer heretofore delivered to City are true and correct in all respects, having been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period covered thereby, and fairly present the financial condition of Developer as of the date thereof; no adverse change has occurred in the financial condition of Developer from that which is reflected therein since the date thereof.

C. The Developer is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority.

D. No event of default under this Agreement has occurred and is continuing, and no event has occurred and is continuing which with notice or the passage of time or both would constitute an event of default hereunder which has not been cured to the satisfaction of City.

E. Developer has full power and authority to execute this Agreement and the deed(s) of trust, when executed, will have been, duly authorized, executed and delivered by Developer

enforceable in accordance with their respective terms, not subject to any defense based upon capacity of Developer or otherwise.

F. The consummation of the transactions contemplated by, and the performance of, this Agreement will not violate or contravene any provision of any instrument creating or governing the business operations of Developer and will not result in a breach of, or constitute a default under, any mortgage, deed of trust, lease, sublease, bank loan or credit agreement or other instrument to which Developer is a party or by which Developer may be bound or affected.

G. No consent of any other party and no consent, license, approval or authorization of, or registration or declaration with, any Governmental Authority is required in connection with the execution, delivery, performance, validity or enforceability of the transactions contemplated by this Agreement or the instruments executed in connection herewith which have not previously been obtained.

H. The Developer holds full legal and equitable title to the Collateral Property in fee simple, subject only to title exceptions set forth in the title insurance which are acceptable to the City.

I. Prior to the recordation of a deed of trust, to be executed at the time of funding of a Grant installment, no work of any kind (including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining, or fencing of the Collateral Property other than that performed by a seller of the Collateral Property) will be commenced or performed on the Property, no equipment or material will be delivered to or upon the Collateral Property for any purpose whatsoever, and no contract (or memorandum or affidavit thereof) for the supplying of labor, materials, or services for the construction of the Improvements will be recorded in the mechanic's lien or other appropriate records in the county where the Collateral Property is located. Following recordation of a deed of trust, Developer shall notify the Director prior to demolition of any improvements located on the subject Collateral Property.

J. There is no fact of which Developer is aware that Developer has not disclosed to City in writing that would adversely affect the property, business or financial condition of Developer.

K. All representations and warranties contained in this section shall survive the consummation of the transactions contemplated in this Grant Agreement. The representations and warranties contained herein are made by Developer as an inducement to City to make the Grant and Developer understands that City is relying on such representations and warranties and that such representations and warranties shall survive any (a) bankruptcy proceedings involving Developer or the Collateral Property, or (b) foreclosure of a deed of trust executed for the Collateral Property or (c) conveyance of title to the Collateral Property in lieu of foreclosure of the deed of trust. Acceptance of each Grant installment constitutes reaffirmation, as of the date of such acceptance, of the representations and warranties of Developer in this Agreement, on which City shall rely in making such installment.



## SECTION 6. COVENANTS AND AGREEMENTS OF DEVELOPER

So long as any obligation for reimbursement of the Grant is outstanding and any of the obligations under this Agreement are not fully performed, Developer covenants and agrees with City that:

1. The obligation of City to make any installment hereunder shall be subject to the prior or simultaneous occurrence or satisfaction of each of the following conditions, if applicable:

(a) City shall have received from Developer all of the documents required by Sections 2 and 3 above duly executed by Developer and amendments thereto deemed necessary by City; and

(b) The deed of trust for the Collateral Property shall have been executed and submitted for recording; and

(c) Developer shall provide, at Developer's expense: (i) a title policy and legal description for each Collateral Property for purposes of executing the deed of trust, and (ii) an appraisal of the market value of the Collateral Property satisfactory to the Director; and

(d) The representations and warranties made by Developer, within Section 4 hereof shall be true and correct as of the date of any Grant installment; and if requested by City, Developer shall give a certificate to City to that effect.

2. Developer shall permit City, any Governmental Authority, and their agents and representatives, to enter upon the Collateral Property and any location where materials intended to be utilized in the construction any improvements are stored, for the purpose of inspection of the Collateral Property and such materials at all reasonable times.

3. No payment of any installment of the Grant shall constitute waiver of any of the conditions of City's obligation to make further installment, nor, in the event Developer is unable to satisfy any such condition, shall any such waiver have the effect of precluding City from thereafter declaring such inability to be an event of default as hereinafter provided. City shall have no obligation to make any installment to Developer after the happening of any event of default, but shall have the right and option to do so; provided, however, that if City elects to make any such installment, no such installment shall be deemed to be either a waiver of the right to demand payment on the Note(s), or any part thereof, or an obligation to make any other installment.

4. Developer shall disburse all Grant funds for costs and expenses incidental to the Grant or redevelopment of the Property specified in the Budget reviewed and approved by the City and attached hereto as **Exhibit B**, or that have been approved by the Director in writing, and for no other purpose.

5. Developer agrees to: (a) give notice to City immediately upon Developer's acquiring knowledge of the presence of any hazardous materials on the Collateral Property or of any hazardous materials contamination with a full description thereof; (b) promptly, at Developer's sole cost and expense, comply with any governmental requirements requiring the removal, treatment or disposal of such hazardous materials or hazardous materials contamination and provide City with satisfactory evidence of such compliance; and (c) provide the City, within thirty (30) days after demand by City, with a bond, letter of credit or similar financial assurance evidencing to City's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such hazardous materials or hazardous materials contamination and discharging any assessments which may be established on the Collateral Property as a result thereof.

Developer shall not cause or suffer any liens to be recorded against the Collateral Property as a consequence of, or in any way related to, the presence, remediation or disposal of hazardous material in or about the Collateral Property, including any state, federal or local so-called "Superfund" lien relating to such matters.

Developer shall at all times retain any and all liabilities arising from the presence, handling, treatment, storage, transportation, removal or disposal of hazardous materials on the Collateral Property. Regardless of whether any event of default shall have occurred and be continuing or any remedies in respect of the Collateral Property are exercised by City, Developer shall defend, indemnify and hold harmless City from and against any and all liabilities (including strict liability), suits, actions, claims, demands, penalties, damages (including, without limitation, lost profits, consequential damages, interest, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, attorney's fees and expenses, and remedial costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future (whether before or after the culmination of the transactions contemplated by this Agreement) be incurred or suffered by City by reason of, resulting from, in connection with, or arising in any manner whatsoever out of the breach of any warranty or covenant or the inaccuracy of any representation of Developer contained or referred to in the deed of trust, this Agreement and/or which may be asserted as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission, or release from the Property of any hazardous materials or any hazardous materials contamination or arise out of or result from the environmental condition of the Collateral Property or the applicability of any governmental requirements relating to Hazardous Materials, WHETHER OR NOT OCCASIONED WHOLLY OR IN PART BY ANY CONDITION, ACCIDENT OR EVENT CAUSED BY ANY ACT OR OMISSION OF CITY.

Such Liabilities shall include, without limitation: (i) injury or death to any person; (ii) damage to or loss of the use of any property; (iii) the cost of any demolition and rebuilding of the Improvements, repair or remediation and the preparation of any activity required by any governmental authority; (iv) any lawsuit brought or threatened, good faith settlement reached, or governmental order relating to the presence, disposal, release or threatened release of any hazardous material on, from or under the Collateral Property; and (v) the imposition of any lien on the Collateral Property arising from the activity of Developer or Developer's predecessors in interest on the Collateral Property or from the existence of hazardous materials or hazardous

materials contamination upon the Collateral Property. The covenants and agreements contained in this Section shall survive the consummation of the transactions contemplated by this Agreement.

6. Developer will pay all closing fees and title company fees, including reasonable attorney's fees, incurred in connection with the preparation, execution, delivery and performance of this Agreement. In this regard, the Developer shall be responsible for the payment of all amounts necessary to cover any administrative or other costs incurred in the making and servicing of the Grant including, but not limited to, title insurance, attorneys' fees, and document preparation costs and filing fees.

7. Developer will furnish City, from time to time upon the reasonable request of City, surveys of the Collateral Property, certified by a registered engineer or surveyor, showing the location of improvements to be within the lot lines and any building or setback lines (if applicable) of the Collateral Property, not infringing established easements, placed in accordance with all applicable laws and ordinances and all restrictive covenants affecting the Collateral Property, and showing no state of facts objectionable to City.

8. Developer will deliver to City, promptly after reasonable request therefore, estoppel certificates or written statements, duly acknowledged, stating the amount of Grant installments paid to Developer under this Agreement.

9. Developer will not, without the prior written consent of City, transfer, convey or otherwise dispose of the Collateral Property or the improvements located thereon or any part thereof to any individual, partnership, joint venture, trust, association, corporation or other legal entity, however organized, during the term of this Agreement.

10. Developer will deliver to City, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Developer claims title to any materials, fixtures or articles subject to the security interest contained in the Deed of Trust.

11. Developer will maintain or cause to be maintained the insurance described in **Exhibit C** in full force and effect in an amount not less than the amount of Grant funds dispersed.

12. Developer will not encumber the Collateral Property or any part thereof with any restrictions, easements, warrants or conditions without the prior written consent of the Director.

13. Developer remains responsible for and shall timely make the payment of ad valorem property taxes and assessments accruing on the Collateral Property while it is owned by Developer during the term of this Agreement.

14. Developer shall obtain approval from the Director for any use that is not a permitted use of the Collateral Properties. Permitted uses include those uses that are permitted under the Dallas Development Code on the Collateral Property, but in no event may they include any use that requires a sexually oriented business license under Chapter 41A of the Dallas City Code, or

a liquor store, a pawn shop, a body piercing studio, or a tattoo studio as those terms are defined by the Dallas Development Code.

## **SECTION 7. DEFAULT, RIGHT TO CANCEL, RECAPTURE OF GRANT PAYMENT AND ENFORCEMENT OF RECAPTURE LIABILITY**

A. A default by Developer shall exist if any one or more of the following occurs and is continuing:

- (a) The failure by Developer to perform or observe any covenant contained herein including completion the requirements of Section 2;
- (b) Any statement, warranty or representation contained herein is false.

Developer shall immediately notify the City in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party is taking or proposes to take with respect thereto. In the event that Developer defaults in its performance of either clause (a) or (b) above, then the City shall give Developer written notice of such default and if Developer has not cured such default within 30 days of said written notice, this Agreement may be terminated. Notice shall be in accordance with Section 13 hereof.

In the event of an Uncured Default, City shall have the right to elect in its sole discretion, to (1) terminate this Agreement effective immediately upon written notice of such intent to Developer, (2) demand immediate repayment by Developer of any and all Grant amounts advanced under this Agreement and said amounts shall be immediately due and payable by Developer without further or additional notice, and (3) pursue any other legal remedies available to City at law or in equity to ensure compliance with this Agreement, the Deed Restrictions, and the Grant Documents. In the event of termination of this Agreement under (1), all Grant funds awarded but unpaid to Developer pursuant to this Agreement shall be immediately rescinded and Developer shall have no further right to such funds. In the event of repayment of Grant funds under (2), any amount due and owing after the demand date shall accrue interest at a default rate equal to the lesser of the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas (but without the addition of a penalty) and the maximum rate of interest allowed by applicable law.

Developer shall have the right, at any time before a Grant installment is made, to terminate this Agreement by giving the City notice by registered mail, return receipt requested. If notice is so given this Agreement shall terminate upon the expiration of 30 days from the date of the notice, and the liability of the parties under this Agreement for the further performance of the terms of this Agreement shall then cease.

## **SECTION 8. ENFORCEMENT OF AGREEMENT**

This Agreement inures to the benefit of, and is enforceable by the parties hereto. Developer does hereby grant to the City the right to prosecute or take other appropriate action, at law or in equity, against Developer to recover any due and owing Grant amount or to foreclose on the Property under the Deed of Trust or to enforce any other covenant or agreement contained in this Agreement and the Grant Documents. If the City prevails in a legal proceeding against Developer, the City is further entitled to recover damages, reasonable attorney fees, and court costs from Developer.

## **SECTION 9. TERMINATION**

The term of this Agreement shall begin on the date of execution and continue through completion of the Project as required herein. Grantee's liability for recapture of the Grant, however, shall survive the expiration of this Agreement. This Agreement may be terminated by the mutual consent of both City and Grantee except as provided herein.

## **SECTION 10. CERTIFICATION REGARDING UNDOCUMENTED WORKERS**

Developer has signed the statement, attached as **Exhibit D**, stating that Developer's business, or a branch, division, or department of Developer's business, does not or will not knowingly employ an undocumented worker and has agreed to abide by the requirements of Chapter 2264 of the Texas Government Code.

## **SECTION 11. FORCE MAJEURE**

It is expressly understood and agreed by the parties to this Agreement that Developer shall perform its commitments detailed in Section 2 above by the dates specified therein; provided however, that Developer shall have such additional time to perform as may be required in the event of force majeure, defined herein and determined at the sole discretion of the Director, if Developer is diligently and faithfully pursuing completion. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of Developer including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, state, federal or municipal government, or de facto governmental action (unless caused by acts or omissions of Developer) fires, explosions, floods, and strikes. In an event of force majeure, Developer shall be excused from doing or performing the same during such period of delay so that the completion dates applicable to such performance, or to the construction requirement, shall be extended for a period of time equal to the period Developer was delayed.

**12. Indemnification and Release.**

DEVELOPER COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, CITY AND ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY LOSS OR DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE, OR NONPERFORMANCE OF THIS AGREEMENT AND/OR THE OPERATIONS, ACTIVITIES, AND SERVICES OF THE PROJECT DESCRIBED HEREIN; AND DEVELOPER HEREBY ASSUMES ALL LIABILITY AND RESPONSIBILITY OF CITY AND ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FOR ANY AND ALL CLAIMS OR SUITS FOR PROPERTY LOSS OR DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KINDS OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE, OR NONPERFORMANCE OF THIS AGREEMENT AND AGREEMENT AND/OR THE OPERATIONS, ACTIVITIES, AND SERVICES OF THE PROJECT DESCRIBED HEREIN.

DEVELOPER LIKEWISE COVENANTS AND AGREES TO AND DOES HEREBY INDEMNIFY AND HOLD HARMLESS CITY FROM AND AGAINST ANY AND ALL INJURY, DAMAGE, OR DESTRUCTION OF PROPERTY OF CITY, ARISING OUT OF OR IN CONNECTION WITH ALL ACTS OR OMISSIONS OF DEVELOPER, ITS OFFICERS, MEMBERS, AGENTS, EMPLOYEES, AGREEMENTORS, SUBAGREEMENTORS, INVITEES, LICENSEES, OR PROJECT PARTICIPANTS.

DEVELOPER AGREES TO AND SHALL RELEASE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT.

DEVELOPER SHALL REQUIRE ALL OF ITS CONTRACTORS AND SUBCONTRACTORS TO INCLUDE IN THEIR AGREEMENTS AND SUBAGREEMENTS A RELEASE AND INDEMNITY IN FAVOR OF CITY IN SUBSTANTIALLY THE SAME FORM AS ABOVE.

THE INDEMNITY PROVIDED FOR ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF CITY AND DEVELOPER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES

**UNDER TEXAS LAW.**

**THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND ARE NOT INTENDED TO CREATE OR LOAN ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

**13. Waiver of Immunity by Developer.** If Developer, as a charitable or nonprofit organization, has or claims an immunity or exemption (statutory or otherwise) from and against liability for damages or injury, including death, to persons or property, Developer hereby expressly waives its rights to plead defensively such immunity or exemption as against City. This section shall not be construed to affect a governmental entity's immunities under constitutional, statutory, or common law. This Section 13 shall survive termination or expiration of the Agreement.

**14. Litigation and Claims.** Developer shall give City immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Developer in conjunction with this Agreement or the Project. Developer shall furnish immediately to City copies of all pertinent papers received by Developer with respect to such action or claim. Developer shall provide a notice to City within 10 days upon filing under any bankruptcy or financial insolvency provision of law.

**15. Prohibition Against Interest / Conflict of Interest.** Developer affirms that it will adhere to the provisions of the Texas Penal Code which prohibits bribery and gifts to public servants. The City may terminate this Agreement immediately if Developer has offered or agreed to confer any benefit upon a City employee or official that such employee or official is prohibited by law from accepting. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Additionally, the following section of the Charter of the City of Dallas shall be one of the conditions of, and a part of, the consideration for this Agreement:

**CHAPTER XXII. SEC. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.**

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.

**16. Notice.** All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier date of the date actually received or the third day following (i) deposit in a United States Postal Service post office or receptacle; (ii) with proper postage, certified mail return receipt requested; and (iii) addressed to the other Party at the address set out below or at such other address as the receiving Party designates by proper notice to the sending Party.

If intended for City, to  
 Director, Office of Economic Development  
 City of Dallas  
 City Hall, Room 5BS  
 1500 Marilla Street  
 Dallas, Texas 75201

If intended for Developer, to:  
 Belinda D. Marsaw, DDS  
 8228 Bruton Road  
 Dallas, Texas 75217

## **SECTION 17. RIGHT OF OFFSET**

City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Developer, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

## **SECTION 18. VENUE**

The obligations of the parties to this Agreement shall be performable in Dallas County, Texas. And, if legal action is necessary in connection with or to enforce rights under this Agreement, exclusive venue shall lie in Dallas County, Texas.

## **SECTION 19. GOVERNING LAW**

This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.



## **SECTION 20. LEGAL CONSTRUCTION**

In the case that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

## **SECTION 21. NOTICE OF CONTRACT CLAIM**

This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Developer shall fully comply with the requirements of this ordinance as a precondition of any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

## **SECTION 22. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Agreement to be executed.

## **SECTION 23. CAPTIONS**

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

## **SECTION 24. ASSIGNMENT AND SUCCESSORS AND ASSIGNS**

An assignment of this Agreement shall require the prior written approval of Director. If Director allows Developer to assign this Agreement, all of the terms and conditions of this Agreement shall be binding upon the successors and assigns of all parties hereto.

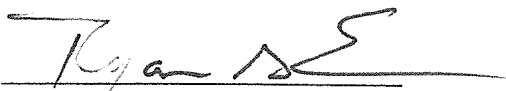
## **SECTION 25. AMENDMENTS; ENTIRE AGREEMENT**

A. Amendments. This Agreement may be modified or amended only by written agreement of the parties, to be attached to and made a part of this Agreement.


B. Entire Agreement. This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement.

EXECUTED on October 13, 2014, by City, signing by and through its City Manager, authorized to execute same by Resolution No. 13-1865 and Resolution 14-1371, approved by the City Council on October 23, 2013 and August 27, 2014, respectively, and by Developer, acting through its authorized officials.

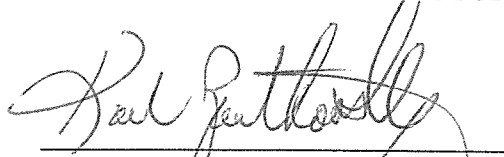
CITY OF DALLAS:  
A. C. GONZALEZ,  
City Manager

By:   
Ryan S. Evans  
First Assistant City Manager


APPROVED AS TO FORM:  
WARREN M. S. ERNST  
City Attorney

By:   
Barbara Martinez  
Assistant City Attorney

RECOMMENDED BY DIRECTOR:

  
Frank Karl Zavitkovsky  
Office of Economic Development

DEVELOPER:  
GBG BDM, LLC,  
a Texas Limited Liability Company

  
Belinda D. Marsaw, President

#### ATTACHMENTS & EXHIBITS

Resolution No. 13-1864, Approved October 23, 2013

Resolution No. 14-1371, Approved August 27, 2014

**Exhibit A** - The Property

**Exhibit B** - Description of the Project including the Schedule for Completion

**Exhibit C** - Insurance Requirements

**Exhibit D** - Certification Regarding Undocumented Workers

**Exhibit E** - Form Deed of Trust and Deed Restrictions to be executed in favor of the City

**Exhibit F** - MWBE

EXHIBIT "A"

BEING a tract of land situated in the J. A. Leonard Survey, Abstract No. 802, being a portion of Lot 6, Block 2/6311, Simms Estates, an Addition to the City of Dallas, Texas according to the Plat thereof recorded in Volume 6, Page 404, Map Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a cross set in the South Right-of-Way line of Bruton Road (a variable Right-of-Way), said iron rod being in the common line of said Lot 6 and Lot 5 of said Block 2/6311, Simms Estates;

THENCE: south 00 degrees 48 minutes 27 seconds East, along said common line, a distance of 300.82 feet to a 3/8 inch iron rod found in the North line of a 7.5' alley, said iron rod also being at the Southeast corner of said Lot 6 and the Southwest corner of said Lot 5;

THENCE: South 89 degrees 26 minutes 14 seconds West, along the North line of said 7.5' alley and the South line of said Lot 6, a distance of 75.00 feet to a 3/8 inch iron rod found at the Southwest corner of said Lot 6 and the Southeast corner of Lot 7 of said Block 2/6311, Simms Estates;

THENCE: North 00 degrees 48 minutes 27 seconds West, along the common line of said Lot 6 and said Lot 7, a distance of 301.14 feet to a cross set in the South Right-of-Way line of Bruton Road;

THENCE: North 89 degrees 40 minutes 28 seconds East, along the South Right-of-Way line of Bruton Road and the North line of said Lot 6, a distance of 75.00 feet to the PLACE OF BEGINNING.

The 1<sup>st</sup> Whereas paragraph and Section 1 of the resolution should read as followings:

**WHEREAS**, GBG BDM, LLC, wishes to partner with the City of Dallas to expand the Dental Delite dental practice to 8222 Bruton Road in Dallas by adding 10,000 square feet of space to the current site located at 8228 Bruton Road Dallas Texas; and

**Section 1.** That the City Manager, upon approval as to form by the City Attorney, is authorized to execute a Chapter 380 Forgivable Loan in the amount of \$150,000 to ~~GBD BDM, LLC~~ **GBG BDM, LLC** for construction costs related to expanding the offices of Dental Delite to 8222 Bruton Road, Dallas Texas.

For your review, please see the attached amended Resolution.

Accordingly, I request that you add this information into your file as part of the original record and forward a corrected stamped copy to me and all copied.

Should you have any further questions or concerns, please contact me at (214) 671-8958.

Karl Zavitkovsky, Director  
Office of Economic Development

Attachment

C: Lee McKinney, Assistant Director, Office of Economic Development  
Tenna Kirk, Agenda Coordinator, Office of Economic Development

## Kirk, Tenna

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**From:** Martinez, Barbara  
**Sent:** Thursday, January 23, 2014 10:03 AM  
**To:** Kirk, Tenna  
**Subject:** RE: Scanned from a Xerox multifunction device

Tenna, This correction is memorandum accurately depicts the revision needed and does not materially change the item approved by the City Council and should be added to Rosa's official record. Barbara

-----Original Message-----

From: Kirk, Tenna  
Sent: Wednesday, January 22, 2014 5:13 PM  
To: Martinez, Barbara  
Subject: FW: Scanned from a Xerox multifunction device

Hi Barbara,

Ms. McKinney asked me to do a correction memo for the attached item that went to council on October 23, 2013. I talked with the CSO and I just need to make sure that you are ok with this correction memo. There were some places in the AIS and Resolution where the company name was wrong. The attached would serve as a correction to go in the official file.

Please let me know if you are ok with this.

I have attached the Memo along with the corrected AIS and Resolution and a copy of the stamped resolution.

Please call me if you have any questions.

Thank you.

-----Original Message-----

From: [Printers@Dallascityhall.com](mailto:Printers@Dallascityhall.com) [<mailto:Printers@Dallascityhall.com>]  
Sent: Wednesday, January 22, 2014 5:10 AM  
To: Kirk, Tenna  
Subject: Scanned from a Xerox multifunction device

Please open the attached document. It was scanned and sent to you using a Xerox multifunction device.

Attachment File Type: pdf

multifunction device Location: City Hall  
Device Name: Printer-CH-5CS-Color

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

**WHEREAS**, GBG BDM, LLC., wishes to partner with the City of Dallas to expand the Dental Delite dental practice to 8222 Bruton Road in Dallas by adding 10,000 square feet of space to the current site located at 8228 Bruton Road Dallas Texas; and

**WHEREAS**, the new construction will improve a currently vacant lot, increase revenue and add 20 new jobs and further the City's goals for development in the Southern Sector.

**NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**Section 1.** That the City Manager, upon approval as to form by the City Attorney, is authorized to execute a Chapter 380 Forgivable Loan in the amount of \$150,000 to GBD BDM, LLC for construction costs related to expanding the offices of Dental Delite to 8222 Bruton Road, Dallas Texas.

**Section 2.** That the other terms of the loan documents shall include:

- (a) Borrower must complete redevelopment of the subject site within three (3) years from the date of the first advance under the Loan Agreement.
- (b) If the Borrower fails to complete development of the subject site within the three year period, the City of Dallas has the option to require Borrower to convey to the City of Dallas Fee simple title to the properties acquired with funds under the loan, free of any liens or encumbrances not acceptable to the City.
- (c) Borrower shall execute a subordinate second lien deed of trust on the subject development site for all costs expended from loan proceeds.
- (d) Borrower shall obtain approval from the City for permitted uses of the property. "Permitted uses" includes those uses that are permitted under the Dallas Development Code on the property, but in no event may they include any use that requires a sexually oriented business license under Chapter 41A of the Dallas City Code, or a liquor store, a pawn shop, a body piercing studio, or a tattoo studio as those terms are defined by the Dallas Development Code.
- (e) As a certificate of occupancy has been obtained for a constructed structure or project on the subject site, Borrower will be released from any obligation associated with the Loan corresponding with loan proceeds advanced.

October 23, 2013**Section 2. (Continued)**

- (f) Deed Restrictions to prevent property sale or transfer of ownership without consent and the approval of the City.
- (g) Loan is subject to final approval of all financing necessary to complete the project.

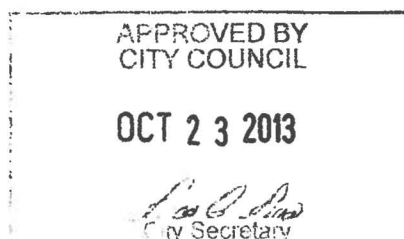
**Section 3.** That the loan, secured by a second lien on the real property, is forgivable if development of site is completed within the three year period and certificate of occupancy is issued for the project. Time may be extended by the Director of City of Dallas, Office of Economic Development.

**Section 4.** That the City Controller is hereby authorized to disburse the forgivable loan from Fund 0352, Department ECO, Unit 9992, Object Code 3015 (developers loan), Activity PPPF, Encumbrance No. ECO9992A240, Vendor No. VC0000012341, Balance Sheet Account 033F (debit notes receivable – developers loan), Balance Sheet Account 0898 (credit deferred revenue – business loan), as necessary to make payments in an amount not to exceed \$150,000.

**Section 5.** That the City Controller is hereby authorized to receive and deposit loan principal repayments, in accordance with the terms of the loan agreement, in Fund 0352, Department ECO, Unit 9992, Revenue Source 847G (credit principal repayment), Activity PPPF, Balance Sheet Account 0898 (debit deferred revenue), Balance Sheet Account 033F (credit notes receivable), in an amount up to \$150,000.

**Section 6.** That nothing in this resolution shall be construed as a binding contract or agreement upon the City, that it is subject to available funding, and there will be no liability or obligation on the City until final contract documents are approved, executed and final closing complete

**Section 7.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.



**WHEREAS**, GBG BDM, LLC., wishes to partner with the City of Dallas to expand the Dental Delite dental practice to 8222 Bruton Road in Dallas by adding 10,000 square feet of space to the current site located at 8228 Bruton Road Dallas Texas; and

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October 23, 2013

**Section 2.** (Continued)

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